JACKSON DAVID JONES

v.

SARA RESORTS SDN BHD

HIGH COURT SABAH & SARAWAK, KUCHING
MUHAMMAD KAMIL AWANG J
[SUIT NO: 22-97-97-1]
20 FEBRUARY 1999

CIVIL PROCEDURE: *Payment into court - Deposit - Money deposited into court pending appeal - Appeal allowed - Judgment of court reversed and re-trial ordered - Whether deposit sustainable - Whether to be refunded to defendant*

CIVIL PROCEDURE: *Interim payment - Entitlement - Deposit no longer sustainable - Whether plaintiff entitled to interim payment - Courts of Judicature Act 1964, s. 25A & Rules of the High Court 1980, O. 22 r. 1A*

Pursuant to a summary judgment of the High Court, the defendant was ordered to deposit a sum of money ('the deposit') into court pending appeal. On appeal, the judgment of the High Court was reversed and a re-trial was ordered.

In this instance, the plaintiff applied for an interim payment under s. 25A of the Courts of Judicature Act 1964 and O. 22A of the Rules of the High Court 1980 or that the deposit in court be kept with interest pending the determination of the plaintiff's action.

The defendant, on the other hand, requested for the refund of the deposit in view of the fact that the judgment against it had been quashed by the Court of Appeal.

Held:

[1] The deposit in court was ordered conditional upon the defendant's appeal against the judgment of the learned High Court judge. It was a pre-requisite before the appeal was made to the Court of Appeal. The instant case was a re-hearing of the plaintiff's action. It was not continuous but quite separate from the initial action in the High Court. When the Court of Appeal reversed the judgment of the High Court, and ordered a re-trial, the parties acquired *status quo ante*. The right to the money deposit remained with the defendant.

[1a] The deposit pursuant to the appeal to the Court of Appeal was no longer sustainable as a deposit is not a pre-requisite in an appeal to the judge in chambers against the Deputy Registrar's decision. The correct thing to do was to return the deposit to the defendant. The defendant had a right to the refund of the deposit.

[2] Section 25A(5) of the Courts of Judicature Act 1964 and O. 22A r. 1 of the Rules of the High Court 1980 contemplate a situation where the proceedings are continuous, eg, in a claim for damages where the quantum is disputed. As the deposit was no longer sustainable, the question of interim payment did not arise at all.

[Application dismissed with costs.]

Legislation referred to:
Courts of Judicature Act 1964, s. 25A, (5)
Rules of the High Court 1980, O. 22A, O. 22A r.1

For the plaintiff - Lim Heng Choo; M/s Lim & Lim Advoc
For the defendant - SY Chan; M/s Ee & Lim Advoc

Reported by Usha Thiagarajah

JUDGMENT

Muhammad Kamil Awang J:

The plaintiff claimed against the defendant for a sum of RM471,789 (hereinafter referred to as "the said sum") being arrears of salaries unpaid. Reversing the Deputy Registrar's decision, the learned High Court judge granted a summary judgment for the said sum to the plaintiff, and ordered the defendant to deposit the said sum in court pursuant to its appeal. On appeal, the Court of Appeal reversed the High Court's decision and ordered a re-trial before another judge.

This is the plaintiff's application under s. 25A of the Courts of Judicature Act 1964 and O. 22A of the Rules of the High Court 1980 for an interim payment to the plaintiff or that the said sum deposited in court, be continued to be kept in an interest-bearing fixed deposit pending the determination of the plaintiff's action. Mr. Fabian Lim of counsel for the plaintiff, in his affidavit in support of the application stated that the plaintiff's claim was based on the letter of offer dated 14 September 1995 and the only issue for trial is whether the letter of offer issued by the defendant as agent for and on behalf of Asia Vacation Clubs Sdn Bhd. The plaintiff believed that he had a strong case. Further, the plaintiff had financial difficulties as he needed money to support his family in the United States of America.

The defendant had written a letter dated 16 October 1998 to the court, requesting for the said sum deposited in court be refunded to them as the judgment against them had been quashed by the Court of Appeal. As the parties' position revert to *status quo ante* then it is right that the deposit should be returned to the defendant.

The deposit in court was ordered conditional upon the defendant's appeal against the judgment of the learned High Court judge. It is a pre-requisite before the appeal was made to the Court of Appeal. Now, in the instant case, it is a re-hearing of the plaintiff's action; it is not continuous but quite separate from the initial action in the High Court. When the Court of Appeal reversed the judgment of the High Court, and ordered a re-trial, the parties acquired *status qua ante*. The right to the money deposit remains with the defendant. As it were, what we have now is a repeat of the position where the High Court would hear again an appeal against the Deputy Registrar's decision. Under the circumstances, the deposit pursuant to the appeal to the Court of Appeal is no longer sustainable, as a deposit is not pre-requisite in an appeal to the judge in chambers against the Deputy Registrar's decision. That being so, the correct thing to do is to return the deposit to the defendant; the defendant has a right to the refund of the deposit which was made pursuant to the appeal to the Court of Appeal, which no longer exists.

Section 25A(5) of the Court of Judicature Act 1964 provides:

> (5) In this section "interim payment", in relation to a party to any proceedings, means a payment on account of any damages, debt or other sum excluding any costs which that party may be held liable to pay to or for the benefit of another party to the proceedings if a final judgment or order of the Court in the proceedings is given or made in favour of that other party.

Order 22A r. 1 of the Rules of the High Court 1980 provides:

> 1. In this Order –
>
> "interim payment", in relation to a defendant, means a payment on account of any damages, debt or other sum (excluding costs) which he may be held liable to pay to or for the benefit of the plaintiff, and any reference to the plaintiff or defendant includes a reference to any person who, for the purpose of the proceedings, acts as next friend of the plaintiff or guardian of the defendant.

The law under the 1964 Act and under the Rules of the High Court 1980, contemplate a situation where the proceedings are continuous, e.g. in a claim for damages where the quantum is disputed.

As the deposit after this order has been made, is non-existent, the question of interim payment does not arise at all. It appears that an interim payment under these provisions of the law is not applicable in this case. Therefore this application is misconceived. I would dismiss the application with costs.